

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

*Wray/aw
PC-I
81273*

FILE: B-217337

DATE: May 23, 1985

MATTER OF: Bryant Paint Contracting, Inc. -
Davis-Bacon Act Debarment

DIGEST:

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had falsified certified payroll records, and induced several of its employees to rebate substantial portions of their back wages. Based on our independent review of the record in this matter, we conclude that the contractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the underpayment of employees and rebate inducement was intentional. Therefore, the contractor will be debarred under the Act.

The Deputy Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated April 17, 1984, recommended that the names Bryant Paint Contracting, Inc. (Bryant); Roy W. Bryant, individually; and Ralph W. Newcombe, individually; be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), which constituted a disregard of obligations to employees under the Act. For reasons that follow, we concur in DOL's recommendation.

Bryant performed work under thirteen contracts (DABT 39-76-C-5058, DABT 39-76-C-5014, DABT 39-76-C-5007, DACA 63-75-C-0233, DACA 63-75-C-0182, DACA 63-76-C-0277, DACA 63-75-C-0228, DACA 63-75-C-0193, DACA 63-75-C-0236, DACA 63-77-C-0184, DACA 63-77-C-0139, DACA 63-75-C-0179, DACA 63-76-C-0227), variously with the Departments of the Army and Air Force doing painting and related work. These contracts were subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a) (1984), the contractor was to submit payroll records certified as to correctness and completeness.

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The DOL found as a result of an investigation that employees were not paid the minimum wages required pursuant to the Davis-Bacon Act. Further, DOL found that certified payrolls were falsified and incomplete, and that employees were induced to rebate portions of their back wages. The DOL informed us that by certified letters dated October 14, 1983, Bryant was given notice in detail of the violations with which it was charged, and that debarment was possible. Further, Bryant was given an opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. § 5.12(b) (1984). The DOL reported to us that while the record indicates that these letters were received, no hearing was requested. After reexamining the record, DOL found that Bryant violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that the names Bryant Paint Contracting, Inc.; Roy W. Bryant, individually; and Ralph W. Newcombe, individually; be placed on the ineligible bidders list for violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under the Act. We concur in this recommendation.

The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. The DOL recommended that Bryant and Messrs. Bryant and Newcombe, individually and as owners of Bryant, be debarred for violations of the Davis-Bacon Act constituting a disregard of obligations to the employees under the Act. In B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate disagreement concerning classification, and "substantial violations" which are intentional as demonstrated by bad faith or gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the Davis-Bacon Act. Falsification of payroll records is a basis for debarment under the Davis-Bacon Act. See, e.g., Metropolitan Home Improvement Roofing Co., Inc., B-215945, January 25, 1985.

Based on our independent review of the record in this matter, we conclude that Bryant and Messrs. Bryant and Newcombe, individually and as owners of Bryant, disregarded their obligations to their employees under the Davis-Bacon

Act. There was a substantial violation of the Davis-Bacon Act in that the underpayment of employees was intentional as demonstrated by Bryant's bad faith in the falsification of certified payroll records. In addition, the record indicates that Bryant induced several of its employees to rebate substantial portions of their back wages.

Therefore, the names Bryant Paint Contracting, Inc., Roy W. Bryant, and Ralph W. Newcombe, individually and as owners of Bryant Paint Contracting, Inc., will be included on a list to be distributed to all departments of the Government, and, pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them or to any firm, corporation, partnership, or association in which they, or any of them, have an interest until 3 years have elapsed from the date of publication of such list.


Henry R. Wray
Associate General Counsel

Memorandum

May 23, 1985

Graham
Pm-I

TO : Group Director, GGD - Claims Group

FROM : Associate General Counsel - Henry R. Wray

SUBJECT: Bryant Paint Contracting, Inc., B-217337-O.M.
(a Davis-Bacon Act case)

Returned herewith are your files Z-2488741 (1), (2), (3), (4), (6), (7), (8), (9), (10), (11), (12), and (13). We have reviewed the record in this matter. We find no reason to object to the payment of the workers involved. Accordingly, the funds on deposit with your office may be disbursed in accordance with established procedures. The Department of Labor should be notified when payment of the funds has been made.

Further, in accordance with the attached decision, the names Bryant Paint Contracting, Inc.; Roy W. Bryant, individually; and Ralph W. Newcombe, individually; are to be placed on the ineligible bidders list pursuant to 40 U.S.C. § 276a-2 of the Davis-Bacon Act.

Also, please note that such listing, as requested by the Department of Labor, should also be for violations of the labor standards provisions of the Contract Work Hours and Safety Standards Act and the Copeland "Anti-Kickback" Act, which were found to have been aggravated or willful within the meaning of 29 C.F.R. § 5.12(a)(1).

Attachments



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

B-217337

May 23, 1985

Mr. Roy W. Bryant
Bryant Paint Contracting, Inc.
1302 S. 10th Street
Kingfisher, Oklahoma 73750

Dear Mr. Bryant:

Enclosed is our decision of today that Bryant Paint Contracting, Inc.; Roy W. Bryant, individually; and Ralph W. Newcombe, individually; have disregarded their obligations to their employees under the Davis-Bacon Act in the performance of contracts DABT 39-76-C-5058, DABT 39-76-C-5014, DABT 39-76-C-5007, DACA 63-75-C-0233, DACA 63-75-C-0182, DACA 63-76-C-0277, DACA 63-75-C-0228, DACA 63-75-C-0193, DACA 63-75-C-0236, DACA 63-77-C-0184, DACA 63-77-C-0139, DACA 63-75-C-0179, DACA 63-76-C-0227, variously with the United States Departments of the Army and Air Force.

The names Bryant Paint Contracting, Inc.; Roy W. Bryant, individually; and Ralph W. Newcombe, individually; will be included on a list to be distributed to all departments of the Government and, pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them or to any firm, corporation, partnership, or association in which they, or any of them, have an interest until 3 years have elapsed from the date of publication of that list.

Sincerely yours,

Henry R. Wray
Associate General Counsel

Enclosure

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-217337

May 23, 1985

Mr. Ralph W. Newcombe
Bryant Paint Contracting, Inc.
Suite 308
Security Building Bank
501 SW. C Street
Lawton, Oklahoma 73501

Dear Mr. Newcombe:

Enclosed is our decision of today that Bryant Paint Contracting, Inc.; Roy W. Bryant, individually; and Ralph W. Newcombe, individually; have disregarded their obligations to their employees under the Davis-Bacon Act in the performance of contracts DABT 39-76-C-5058, DABT 39-76-C-5014, DABT 39-76-C-5007, DACA 63-75-C-0233, DACA 63-75-C-0182, DACA 63-76-C-0277, DACA 63-75-C-0228, DACA 63-75-C-0193, DACA 63-75-C-0236, DACA 63-77-C-0184, DACA 63-77-C-0139, DACA 63-75-C-0179, DACA 63-76-C-0227, variously with the United States Departments of the Army and Air Force.

The names Bryant Paint Contracting, Inc.; Roy W. Bryant, individually; and Ralph W. Newcombe, individually; will be included on a list to be distributed to all departments of the Government and, pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them or to any firm, corporation, partnership, or association in which they, or any of them, have an interest until 3 years have elapsed from the date of publication of that list.

Sincerely yours,

Henry R. Wray
Henry R. Wray
Associate General Counsel

Enclosure